



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2004

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2004-4552

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202850.

The Texas Youth Commission (the "commission") received a request for information pertaining to a particular incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information constitutes a completed investigation made of, for, or by the commission. Section 552.022 of the Government Code provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" constitutes "public information . . . not excepted from required disclosure . . . unless . . . expressly confidential under other law" or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). You do not claim that the submitted information is excepted from disclosure under section 552.108. You assert instead that it may be withheld pursuant to section 552.103 of the Government Code. This section is a discretionary exception to disclosure that protects a governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, none of the submitted information may be withheld pursuant to section 552.103. However, we also understand you to claim that some of the submitted

information is excepted from disclosure under section 552.101, which does constitute other law for purposes of section 552.022, and we will consider whether that exception applies.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that other statutes make confidential. You contend that section 61.073 of the Human Resources Code applies in this instance. Section 61.073 requires the commission to maintain “written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to [the commission’s] control.” Hum. Res. Code § 61.073. This section further provides that “[e]xcept as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.”¹ *Id.* Section 61.0731 of the Human Resources Code allows for permissive release of such records by the commission “to the child and the child’s parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future.”² *Id.* § 61.0731. These provisions generally govern the commission’s records regarding youths who are confined to commission facilities.

However, the records at issue in this instance pertain to an investigation of alleged abuse of a youth confined to a commission facility and therefore are also subject to section 261.201 of the Family Code. Because section 261.201 applies to a more narrowly defined range of information, we find that it is the more specific statute and therefore governs in this instance. *See generally Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex.2000) (“more specific statute controls over the more general”); *cf.* Open Records Decision No. 598 (1991) (concluding that, in governing access to specific subset of information, predecessor to Medical Practice Act prevails over more general provisions of predecessor to Public Information Act (“Act”)). Section 261.201 provides in part:

¹ Section 61.093(c) of the Human Resources Code provides for disclosure of information relating to a child who has escaped from custody. Section 58.005(a) of the Family Code provides that information obtained for the purpose of diagnosis, examination, evaluation, or treatment of a child by an agency providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to certain specified persons or under certain specified circumstances. Chapter 61 of the Code of Criminal Procedure governs information pertaining to criminal combinations and criminal street gangs. You do not indicate that the commission is authorized to release any of the information at issue under section 61.093 of the Human Resources Code, section 58.005(a) of the Family Code, or chapter 61 of the Code of Criminal Procedure.

² You do not inform us that a mental health professional has determined that release of this information would be detrimental to the child’s treatment in this instance.

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The commission is authorized to conduct an investigation under chapter 261. *See* Fam. Code § 261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). The victim in the submitted investigation was twelve at the time of the incident at issue, and therefore was a child for purposes of chapter 261. *See* Fam. Code § 101.003(a) (defining “child” for purposes of section 261.201 as “person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”).

Having reviewed the submitted information, we find that it constitutes files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. We note that the commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See* Fam. Code § 261.409 (commission by rule shall adopt standards for investigation under section 261.401 of Family Code); 37 T.A.C. § 93.33.

Section 93.33 of title 37 of the Texas Administrative Code provides in part:

A report will be provided to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be edited to protect the identity of the person making the report, of other youth, and of any other person who may be harmed by the disclosure.

37 T.A.C. § 93.33(1)(5) (emphasis added). The requestor in this instance states that he is an attorney representing the youth’s parent. Therefore, pursuant to section 93.33(1)(5), the commission must provide the requestor with a report concerning this investigation that has been “edited to protect the identity of the person making the report, of other youth, and of

any other person who may be harmed by the disclosure.” The remaining submitted information must be withheld under section 552.101 in conjunction with section 261.201.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

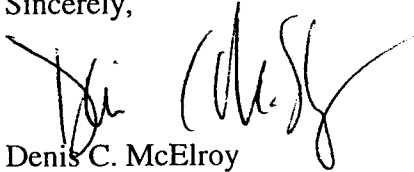
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

³We note, however, that if the Texas Department of Family and Protective Services has created a file on this incident, the child’s parent(s) may have a statutory right to review the file. *See* Fam. Code § 261.201(g).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Denis C. McElroy', with a stylized flourish extending to the right.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/krl

Ref: ID# 202850

Enc. Submitted documents

c: Ms. Violetta Conchas
The Dent Law Firm
1120 Penn Street
Fort Worth, Texas 76102
(w/o enclosures)